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February 10, 2011

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TO: FCC
Office of the Secretary
445 12th Street SW
Washington, DC 20554

FROM: Minot School District No. 1
215 2nd Street SE
Minot, ND 58701

LEGAL COUNSEL:

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RE: REQUEST FOR REVIEW
CC Docket No. 02-6
CC Docket No. 96-45

This correspondence shall constitute Minot Public School District No. 1's (hereinafter "Minot") Request for Review and Appeal of the decision of the Universal Service Administrative Company (hereinafter "USAC") Administrator's Decisions on Appeal dated December 16, 2010 and December 20, 2010, respectively, as to the following funding request numbers:

<u>Funding Request Number</u>	<u>Billed Entity Number</u>	<u>Form 471 Application Number</u>	<u>FCC Registration Number</u>	<u>Funding Year</u>	<u>Funding Amount</u>
1429449	134630	519543	0011990397	2006	\$57,337.54
1429480	134630	519543	0011990397	2006	\$14,784.49
1422811	134630	516904	0011990397	2006	\$41,628.00
1423270	134630	516904	0011990397	2006	\$ 2,522.16
1423203	134630	516904	0011990397	2006	\$ 2,880.00
1429556	134630	519543	0011990397	2006	\$ 5,200.42
1587089	134630	573575	0011990397	2007	\$61,705.72
1587132	134630	573575	0011990397	2007	\$15,627.97
1582913	134630	572735	0011990397	2007	\$ 1,282.10
1582355	134630	572735	0011990397	2007	\$42,456.00
1582445	134630	572735	0011990397	2007	\$ 2,928.00
1587444	134630	573575	0011990397	2007	\$ 5,475.36

Minot received USAC Notification of Commitment Adjustment letters dated October 8, 2010 for funding years 2006 and 2007 covering the above-stated funding request numbers. Minot filed its Appeal dated November 22, 2010, whereby Minot appealed the Commitment Adjustment Decisions with respect to each funding request number. The USAC denied Minot's Appeal pursuant to its Administrator's Decisions on Appeal dated December 16, 2010 and December 20, 2010, from which Minot is now appealing to the FCC.

In this regard, the basis and support for Minot's appeal of the USAC's Administrator's Decision is the same for each funding request number set forth above and will not be repeated. As such, the evidence, rationale and arguments set forth herein apply to all funding request numbers, and Minot would request that this correspondence be considered an appeal for all such funding request numbers.

As set forth in the USAC's Administrator's Decisions dated December 16, 2010 and December 20, 2010 with respect to all above-stated funding request numbers, the USAC made the following determination:

"During the course of an audit, it was determined that you failed to comply with all FCC, state and local procurement/competitive bidding requirements by failing to submit an advertisement for bids in the local newspaper. The FCC rules require that the applicant submits a bona fide request for services by conducting internal assessments of the components necessary to use effectively the discounted services they order, submitting a complete description of services they seek so that it may be posted for competing providers to evaluate and certify to certain criteria under penalty of perjury. Since you failed to comply with local and state procurement laws, you violated the competitive bidding process. Accordingly, your funding commitment was rescinded in full and USAC will seek recovery of any dispersed funds from the applicant. On appeal you have failed to

provide evidence that the initial determination was incorrect. Therefore, the appeal is denied.”

It is the position of Minot that the fact that Minot did not submit an advertisement for bids in the local newspaper does not constitute any failure by Minot to comply with any FCC, state and/or local procurement/competitive bidding requirements for the reasons set forth below and, therefore, the FCC should approve this appeal of Minot.

Minot will address any such FCC, local and state procurement/competitive bidding requirements in that order, respectively, below.

I. **FCC:**

There is no discussion or determination in the USAC’s Administrator’s Decisions on Appeal as to any specific FCC regulation or requirement that was allegedly violated by Minot. In fact, Minot did comply with all FCC requirements regarding the posting of bid requests for desired services as required in the creation of Form 470. As such, Minot’s appeal may not be denied on the basis that Minot failed to comply with any FCC regulation or requirement.

II. **MINOT SCHOOL DISTRICT NO. 1 PROCUREMENT/COMPETITIVE BIDDING REQUIREMENT:**

The Minot School District No. 1’s Purchasing Procedure Policy #330, which for the purposes of the USAC’s Administrator’s Decision on Appeal and in this discussion has been referred to as the local procurement/competitive bidding requirement, is attached hereto as Attachment A. In this regard, as to the purchasing of necessary supplies, equipment and services for use by Minot, such policy provides that:

These items must be procured efficiently and economically. The measure of efficient, economical purchasing is the degree to which the right quantity goes to the right place at the right time and at the right price. (emphasis added.)

There is no evidence to suggest that, in this case, Minot did anything other than procure the subject telecommunication services identified by the above-stated funding request number items both efficiently and economically and, therefore, in compliance with Minot’s procurement policy. There is no evidence whatsoever that with respect to the telephone services at issue, Minot did not obtain the right quantity, at the right place and at the right time, and most importantly, at the right price. In fact, the Moss-Adams LLP - Independent Accountant’s Report dated May 22, 2009 submitted to the USAC, supports Minot’s position that it procured the subject telecommunication services at the right price. In this regard, as to the effect of there being no advertisement for bids by Minot, auditors Moss-Adams LLP specifically stated that, pursuant to Government Auditing Standards, same was an immaterial instance and “did not result in a monetary impact to the SLSM funding”. (emphasis added.) As such, there is nothing in the Moss-Adams LLP Auditor’s Report to suggest that Minot did not receive the right quantity, at the right

place and at the right time, and at the right price in compliance with Minot's Purchasing/Procurement Procedure #330 set forth above.

To the extent the FCC shall focus on what Minot would assume to be the purpose of an E-rate audit, that being the discovery of fraud and misuse of E-rate funds, Minot can, without reservation, state that that did not happen in this case. Minot assumes that the USAC's Administrator's Decision on Appeal implies that if Minot had advertised in the local newspaper, the result in this case would have been better pricing, and that as a result of not advertising Minot paid higher than market dictated prices for the telecommunication services obtained by Minot. First, there can be no such implication, as the finding by auditors Moss-Adams LLP is to the contrary as such auditors found that the acquisition of such telecommunication services by Minot "did not result in a monetary impact to the SLSM funding". Additionally, Minot receives some of the lowest prices in the state and perhaps even the country for the telecommunication services that Minot submitted for E-rate funding. Minot can show evidence of that by comparing what Minot pays for the services to that which other similar sized school districts in the state of North Dakota, and even what the state of North Dakota, itself, pays for similar services. Minot pays, on average, \$250.00 per month per school for Minot's connection to a gigabyte WAN service. Grand Forks schools (the school district closest to our size in North Dakota) pays on average \$445.00 per month per school. As such, to assume that Minot or the federal government was harmed or that Minot did not receive competitive pricing with respect to the subject telecommunication services would be incorrect.

Minot's Local Purchasing/Procurement Policy #330 sets forth certain special considerations to consider when applying the policy (see Attachment A). One such consideration is that:

- "2. Competitive bids or quotations shall be solicited in connection with all purchasing whenever possible and within the legal requirements of the law". (emphasis added.)

As to the subject telecommunication services at issue in this case, it was simply not possible for Minot to solicit competitive bids in connection with the purchasing of the subject telecommunication services as contemplated by the policy and, thus, Minot did not fail to comply with such special consideration in this case. The telecommunication services at issue were provided by SRT Communications, Inc. (hereinafter "SRT"). It would be impossible or impractical for any other telephone provider to do business within Minot due to the telephone provider restrictions as cited by Mr. Steve Lysne, CEO of SRT, in his letter and supporting documentation attached hereto as Attachment B. As set forth in Attachment B, regarding Eligible Local Exchange Telecommunication Service Providers in Minot, North Dakota, Mr. Lysne specifically states, as follows:

"The boundary of the Minot Public School District No. 1 is all within the Local Exchange Telecommunications service area of SRT Communications, Inc. (SRT). SRT is the only Local Exchange Carrier in your district that has both a Certificate of Public Convenience and

Necessity granted by the North Dakota Public Service Commission (for the construction and operation of a telephone plant or system in Ward County) and a Franchise from the City of Minot (to construct, maintain and operate a telephone and communications system within the city limits)".

Further, as set forth in Attachment B, Mr. Lysne specifically states, as follows:

"SRT Communications, Inc. qualifies as a "rural telephone company" because as a local exchange carrier, we provide exchange services to fewer than 50,000 access lines. Therefore, for the requested services the Minot Public School District identified as "Local Phone Service", SRT is the only eligible Telecommunications Carrier providing such services in the School District". (emphasis added.)

As SRT is the only eligible Telecommunications Carrier providing the subject telecommunication services to Minot, it was not possible to solicit any competitive bid as considered by Minot's Local Purchasing/Procurement Policy #330 (Attachment A). Therefore, Minot did not fail to follow such procurement policy in that regard. Simply put, it would be impossible for another telephone company to make a bid within the timelines required under E-rate, which would be to submit a bid in January and start to provide services in July. That simple fact renders the argument about any harm done to E-rate funds mute. There is only one provider of telephone services in Minot at present and in the immediate future, and Minot would not have received another viable bid for telecommunication services whether an advertisement had been placed in the local newspaper or not.

It is important to note that while Minot did not place an advertisement in the local newspaper Minot did, in fact, individually contact all known telecommunication service providers in an attempt to solicit from such providers a bid/quotation. In that regard, Minot not only met the intent and spirit of its local procurement policy, but arguably took actions above and beyond any requirement that an advertisement simply be placed in the local newspaper. Of course, such individual contact with all known service providers did not result in any bid or quote from any provider other than SRT, as SRT is the only eligible telecommunications carrier which may provide such services to Minot.

For the above-stated reasons, Minot's Appeal may not be denied on the basis that Minot failed to comply with its Procurement/Purchasing Procedure Policy #330.

III. **NORTH DAKOTA CENTURY CODE § 15.1-09-34:**

Another special consideration of Minot's Local Procurement/Purchasing Procedure #330 is that the purchasing procedures employed by Minot shall comply with applicable laws and regulations of the state of North Dakota.

In this regard, N.D.C.C. § 15.1-09-34, a copy of which is attached hereto as Attachment C, governs contracts involving the expenditure of funds by school districts.

N.D.C.C. § 15.1-09-34 provides, in pertinent part, as follows:

- “1. Except as provided in this section, the board of a school district may not enter a contract involving the expenditure of an aggregate amount greater than \$25,000.00 unless the school board has given ten (10) days notice by publication in the official newspaper of the district, received sealed bids, and accepted the bid of the lowest responsible bidder. This section does not apply to contracts for...
- c. Articles not sold on the open market.
- e. Patented, copyrighted, or exclusively sold articles so distinctive that only one brand can be purchased”.

As previously discussed in Section II above, and as specifically stated by Mr. Lysne as CEO of SRT, in this case SRT was the only eligible Telecommunications Carrier providing the subject telecommunication services to the Minot School District. It is clear that the telecommunication services to be purchased by Minot were not articles that could be sold on the open market to Minot and, more importantly, such telecommunication services were, in fact, exclusively sold articles so distinctive that only one brand (SRT) could be purchased by Minot. As such, the publication and bid requirements set forth in N.D.C.C. § 15.1-09-34 do not apply to Minot's acquisition of the subject telecommunication services from SRT.

To the extent that it may be determined that the plain reading of N.D.C.C. § 15.1-09-34 required publication in the instant case, the North Dakota maxims of jurisprudence must then also be considered and applied with respect to this appeal. Such maxims are specifically intended to aid in the just application of the laws of the state of North Dakota, which would include the just application of N.D.C.C. § 15.1-09-34 to Minot's purchase of the subject telecommunication services in this case.

In this regard, the maxim set forth in N.D.C.C. § 31-11-05(23) specifically provides, as follows:

- “23. The law neither does nor requires idle acts.”

Again, SRT is the only eligible Telecommunications Carrier providing the subject telecommunication services to Minot. As discussed, it would be impossible for another telephone company to make a bid within the timelines required under E-rate procedures, and as SRT is the only eligible Telecommunications Carrier it is clear that Minot would not have received another viable bid for the subject telecommunication services whether Minot had advertised in the local newspaper or not. As such, attempting to give a ten (10) day notice by publication in the official newspaper, receiving sealed bids, and

attempting to accept a bid from the lowest responsible bidder would be nothing more than an "idle act", which such an idle act is specifically not required pursuant to N.D.C.C. § 31-11-05(23). Minot was not legally required to perform such idle act of notice by publication as contemplated by N.D.C.C. § 15.1-09-34.

For the above-stated reasons, Minot's Appeal may not be denied on the basis that Minot failed to comply with the applicable laws of the State of North Dakota.

IV. **CONCLUSION:**

Based upon the evidence, rationale and arguments set forth herein, it is the position of Minot that the fact that Minot did not submit an advertisement for bids in the local newspaper does not constitute any failure by Minot to comply with any FCC, state and/or local procurement/competitive bidding requirements with respect to all above-stated funding request numbers. Additionally, it is Minot's opinion that common sense should prevail and as stated herein, Minot believes that the purpose of the E-rate audit and USAC review is to search out and correct fraud and improper use of E-rate funds. Clearly, there was no such fraud and/or improper use by Minot in the instant case, and that for Minot to be faced with the maximum financial penalty (rescinding Minot's entire funding for the years 2006 and 2007) would seem to be unjustified and unreasonable.

Minot respectfully requests that this Appeal to the FCC be approved and, as such, that the USAC Administrator's Decisions on Appeal to rescind all funding for the years 2006 and 2007 be reversed.

Respectfully submitted,

McGEE, HANKLA, BACKES & DOBROVOLNY, P.C.



Brian W. Hankla

Counsel for Minot Public School District No. 1

E-mail: bhankla@mcgeelaw.com

BWH:tv:fcc1

Adopted: July 24, 1995

School District Code: 330

Purchasing Procedures

The purchasing, receiving, storing, and distribution of necessary supplies, equipment and services for use in the educational program and for the various auxiliary services represent a significant expenditure in the school budget. These items must be procured efficiently and economically. The measure of efficient, economical purchasing is the degree to which the right quantity goes to the right place at the right time and at the right price.

Specific Considerations:

1. The Director of Purchasing is appointed by the Board to serve as purchasing agent. He/She shall be responsible for developing and administering the purchasing program of the School District.
2. Competitive bids or quotations shall be solicited in connection with all purchasing whenever possible and within the legal requirements of the law.
3. The Director of Purchasing is authorized to issue purchase orders without prior approval of the Board where formal bidding procedures are not required by law or requested by the Board, and when budget appropriations are adequate to cover such obligations.
4. All contracts which require public advertising and competitive bidding shall be awarded by resolution of the Board. Recommendations for the award of all such contracts shall be submitted to the Board by the Director of Purchasing.
5. Items commonly used in the various schools or units thereof shall be standardized whenever consistent with educational goals and in the interest of efficiency or economy.

6. The purchasing procedures employed shall comply with all applicable laws and regulations of the State of North Dakota.
7. Opportunity shall be provided to all responsible suppliers to do business with the School District.
8. Any concern that conflict of interest may be a part of any School District purchase concerning Board members or School District employees should be referred to the School District attorney for a legal opinion.



November 8, 2010

Mr. Scott Moum
Minot Public School District #1
215 2nd Street SE
Minot, ND 58701

Dear Mr. Moum:

This letter is in response to your question regarding local exchange telecommunications service providers in the area which the Minot Public School District # 1 resides. The boundary of the Minot Public School District #1 is all within the Local Exchange Telecommunications service area of SRT Communications Inc (SRT). SRT is the only Local Exchange Carrier in your District that has both a Certificate of Public Convenience and Necessity granted by the North Dakota Public Service Commission (for the construction and operation of a telephone plant or system in Ward County) and a Franchise from the City of Minot (to construct, maintain and operate a telephone and communications system within the city limits).

The Telecommunications Act of 1996 specifically defines which telecommunications exchange service areas must open up their markets to competitive "telecommunications" services. Telecommunications is defined by the act to mean "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form and content of the information as sent and received". For the purposes of your service request, telecommunications services would be deemed to include local telephone exchange service as well as circuit-based services such as T-1's.

Section 254 of the act specifically provides an exemption for "Rural Telephone Companies" from the competitive requirements of the act until such company has received a bona fide request for interconnection, and the State Commission (North Dakota Public Service Commission) determines that such request is not unduly economically burdensome, and is technically feasible. SRT Communications Inc. has not received a bona fide request for interconnection, and therefore is still the only carrier providing Local Exchange and Circuit-Based switching services in the Minot Public School District area.

SRT Communications Inc. qualifies as a "Rural Telephone Company" because as a local exchange carrier, we provide exchange services to fewer than 50,000 access lines. Therefore, for the requested services the Minot Public School District identified as "Local Phone Service", SRT is the only Eligible Telecommunications Carrier providing such services in the School District.

Attached is the following: 1) the SRT Certificate of Public Convenience and Necessity (Certificate # 364), 2) SRT's Franchise Ordinance # 3067 from the City of Minot, and 3) excerpts from the Telecommunications Act of 1996 documenting sections noted above.

Sincerely

A handwritten signature in dark ink, appearing to read "A. D. Lysne", written over a horizontal line.

Steven D. Lysne
CEO/General Manager

STATE OF NORTH DAKOTA

Certificate of Public Convenience and Necessity

First Reissued Certificate Number 364

This is to certify that public convenience and necessity require, and permission is granted for the construction and operation of a telephone plant or system in portions of the counties of Bottineau, McHenry, Mountrail, Pierce, Renville, Sheridan, Ward, and Wells, North Dakota by SRT Communications, Inc.

This certificate is issued in accordance with the report and order of this Commission dated November 3, 1999 in Case No. PU-2147-99-421 and is subject to the conditions and limitations noted thereon.

CONDITIONS: This certificate is conditioned upon SRT Communications, Inc. securing consent, franchise, permit, ordinance, or other authority of the proper municipal or other public authority for the exercise of the rights and privileges granted herein.

Bismarck, North Dakota, January 27, 2000.

ATTEST:

PUBLIC SERVICE COMMISSION


Executive Secretary


Commissioner

David Hogue Sht 6/25/08

Ordinance No. 3067

ORDINANCE NO. 3067

AN ORDINANCE GRANTING PERMISSION TO MINOT TELEPHONE COMPANY, ITS SUCCESSORS AND ASSIGNS, TO CONSTRUCT, MAINTAIN, AND OPERATE IN THE CITY OF MINOT, NORTH DAKOTA, FOR A TERM OF TWENTY (20) YEARS, A TELEPHONE AND COMMUNICATIONS SYSTEM FOR THE PURPOSE OF PROVIDING TELEPHONE AND COMMUNICATIONS SERVICE IN, THROUGH, AND TO SAID CITY AND TO ITS INHABITANTS, AND OTHERS, AND TO USE THE STREETS, ALLEYS, AND PUBLIC GROUNDS OF SAID CITY FOR SAID PURPOSES.

IT IS HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF MINOT, NORTH DAKOTA, THAT:

Section 1. DEFINITIONS. For the purposes of this ordinance, the following terms, phrases, words, and their derivations, shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directly.

- (1) "City" is the City of Minot, North Dakota.
- (2) "Company" is the grantee of the rights under this franchise.
- (3) "Council" is the city council of the City of Minot, North Dakota.
- (4) "Person" is any person, firm, partnership, association, corporation, company, or organization of any kind.
- (5) "Indemnify" means that Indemnitor shall save Indemnatee harmless from all loss sustained by Indemnatee on account of any suit, judgement, execution, claim, or demand, whatsoever, including attorneys' fees and court costs, resulting from negligence on the part of Indemnitor arising out of the operations referred to. The Indemnatee shall notify the Indemnitor within ten (10) days after presentation of any claim or demand, either by suit or otherwise, made against the Indemnatee on account of any negligence as aforesaid on the part of the Indemnitor.

Section 2. GRANT OF AUTHORITY. There is granted to Minot Telephone Company, a North Dakota corporation, its successors and assigns, hereinafter referred to as the "Company", during the term hereof, the right and privilege of constructing, operating, and maintaining in the City of Minot, North Dakota, a telephone and communications system, and to use the public right-of-way accordingly, as long as the company's plant and improvements therein shall be located so as not to interfere unnecessarily with the safety and convenience of ordinary travel along and over said

streets, alleys, and public grounds, and provided further that in connection therewith the Company shall be subject to such reasonable regulation as may be imposed by the City Council.

(1) NON-EXCLUSIVE GRANT. This ordinance shall not be construed to grant any exclusive right, privilege, or franchise to the company. The City reserves the right to grant a similar use of said streets, alleys, and public ways to any person, firm, corporation or association at any period of this franchise.

Section 3. COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES. The Company shall be subject to the present and future laws of the State of North Dakota and the lawful exercise of the police power by the City, and to such reasonable regulations as the City shall now or hereafter by ordinance provide.

Section 4. SERVICE STANDARDS AND COMPANY RULES. Company shall maintain its lines and operate its system so as to provide efficient utility service in accordance with the present and future laws of the State of North Dakota and the reasonable regulation of the Public Service Commission (or such other public authority, including City, which may at some future date be given jurisdiction), and may promulgate rules, regulations, terms and conditions to enable it to do so, subject to said laws and regulations. Company shall file a copy of such rules and regulations with the City Auditor.

Section 5. CONDITIONS ON STREET OCCUPANCY.

(1) PLACEMENT OF FIXTURES. The Company shall not place poles or other fixtures where the same will interfere with sanitary sewer mains, storm sewer mains, water hydrants, water mains, or other utility installations and company plans for such usage, restoration, relocation, and placement of fixtures shall be submitted to the City Engineer for approval. The City Engineer shall approve such usage, location, and placement of fixtures if same does not interfere with present or future usage by City utilities, with any disapproval of same being subject to appeal to the Council. The City Engineer shall have the right to inspect the placement of Company fixtures in order to insure compliance with approved plans.

(2) USE AND RESTORATION. In erecting, installing, enlarging, repairing, maintaining, moving, removing, or replacing said poles, pole lines, masts, conduit, wires, cables, or any other fixtures or appurtenances installed in pursuance of the authority hereby granted, the Company shall, in all cases, place the streets, alleys, city utility lines, or public ways in, on, under, over, or across which the same are located, in as good condition as they were prior to said operations, subject to the ordinances made and provided therefor, and Company shall indemnify City.

(3) RELOCATION DUE TO STREET VACATION OR MUNICIPAL IMPROVEMENT PROJECTS. In the event that at any time during the period of this franchise the City Council initiates an improvement project

- which requires the removal or relocation of the Company's facilities, located on public streets, alleys, or public ways, the Company, upon reasonable notice by the City, shall remove, relay, and relocate its pole lines, masts, wires, cables, poles and other fixtures or appurtenances without charge to the City. Any relocation, removal, or arrangements of any such facilities made necessary because of the extension into or through the City of a federally-aided state trunk highway included within the National System of Interstate Highways shall be governed by the provisions of Section 24-01-41, of NDCC and any future amendments thereof. In the event that Federal or State grants are made available for financing of any municipal project requiring relocation of Company's facilities it is intended that the Company shall be reimbursed for removal or relocation costs to the extent that Federal or State funds are available. It is the intent of this section to provide that the City shall not be required to commit local funds to relocation or removal costs of Company's facilities located on public streets, alleys, or public ways on any improvement project initiated by the City Council.

However, the City shall not vacate any street, alley, or public way for either public or private purposes, after the installation of such poles, pole lines, masts, wires, cables or any other fixtures or appurtenances, unless adequate easements for the operation of said facilities are provided or the reasonable cost of relocating the same and the loss and expense resulting from such relocation is first paid to the Company (except there shall be no reimbursement if the vacation is solely for a City improvement), and any such vacation shall not operate to deprive the company of the right to operate such facilities until this has been accomplished.

(4) PERMISSION TO TRIM TREES. There is also granted to Company, during the terms hereof, permission and authority to trim all trees and shrubs in the streets, alley and public ways of said City, and under its jurisdiction, interfering with the proper erection, repair, and maintenance of any poles, pole lines, masts, wires, cables, or any other fixtures or appurtenances installed in pursuance of the authority hereby granted, provided that Company shall indemnify City.

Section 6. CITY RIGHTS IN FRANCHISE.

(1) USE OF SYSTEM BY CITY. The City shall have the right during the life of this franchise, free of charge, where aerial construction exists, to maintain upon the poles of Company within the City limits, wires and pole fixtures necessary for an alarm system to be constructed and maintained in accordance with applicable safety standards and in accordance with Company's specifications, and City shall indemnify Company.

(2) PROCEDURE AFTER TERMINATION. When the term of this franchise has expired, continued occupancy of the streets shall be at the will and at sufferance of the City, and continuation of

service shall be at the will of the Company except that the Company does hereby agree that it shall not cease providing service or remove its facilities except upon reasonable notice to the City, and the City does hereby agree that it shall not direct company to cease providing service or to remove its facilities except upon reasonable notice to Company.

(3) RIGHT OF ACQUISITION BY THE CITY. Pursuant to the North Dakota constitution and State Law, the City at any time shall have the right, by eminent domain to condemn and take over the property of the utility as provided by law.

Section 7. TAXATION. The City reserves the full right of taxation of the Company allowed to it under applicable Federal and State laws.

Section 8. RATES. The Company agrees that it shall be subject to all authority now or hereafter possessed by the City, or any other regulatory body having competent jurisdiction to fix just, reasonable and compensatory telephone rates.

Section 9. TERM OF FRANCHISE. This ordinance shall be in full force and effect from and after its passage and publication, as provided by law, and shall continue in force and effect for a term of twenty (20) years after the effective date. Upon written request of either party, the terms and conditions of this franchise may be reviewed at the end of each five (5) year period. Any changes made by agreement of the parties involved as a result of one of these reviews shall become binding insofar as the balance of the franchise term is concerned. The Company shall, if it accepts this ordinance, and the rights hereby granted, file a written acceptance of the franchise rights hereby granted with the City Clerk within ninety (90) days from the date of the publication of this ordinance. If said acceptance is not filed, the provisions of this ordinance shall be null and void.

Section 10. ASSIGNMENT. Company shall have full right and authority to assign to any person, persons, firm, or corporation all the rights conferred upon it by this Ordinance, provided that the assignee of such rights, by accepting such assignment, shall become subject to the terms and provisions of this Ordinance, and amendments thereto.

Section 11. UNDERGROUNDING OF EXISTING OVERHEAD FACILITIES. The City recognizes that a need exists for the placement of telephone facilities underground in certain instances and it will adopt appropriate ordinances as necessary to meet the needs of the public and municipality in this respect.

SECTION 12. EFFECTIVE DATE. This ordinance shall take effect and be in force on its passage and approval or upon expiration of the existing franchise, whichever is later.

PASSED FIRST READING: February 3, 1992

PASSED SECOND READING: March 2, 1992

APPROVED:

Dr. George M. Christensen
Dr. George M. Christensen, Mayor

ATTEST:

David W. Waing
David W. Waing, City Clerk

Telecommunications
Act of 1996

section, the Commission shall not preclude the enforcement of any regulation, order, or policy of a State commission that--

`(A) establishes access and interconnection obligations of local exchange carriers;

`(B) is consistent with the requirements of this section; and

`(C) does not substantially prevent implementation of the requirements of this section and the purposes of this part.

`(e) NUMBERING ADMINISTRATION-

`(1) COMMISSION AUTHORITY AND JURISDICTION- The Commission shall create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis. The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States. Nothing in this paragraph shall preclude the Commission from delegating to State commissions or other entities all or any portion of such jurisdiction.

`(2) COSTS- The cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.

`(f) EXEMPTIONS, SUSPENSIONS, AND MODIFICATIONS-

`(1) EXEMPTION FOR CERTAIN RURAL TELEPHONE COMPANIES-

`(A) EXEMPTION- Subsection (c) of this section shall not apply to a rural telephone company until (i) such company has received a bona fide request for interconnection, services, or network elements, and (ii) the State commission determines (under subparagraph (B)) that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 (other than subsections (b)(7) and (c)(1)(D) thereof).

`(B) STATE TERMINATION OF EXEMPTION AND IMPLEMENTATION

SCHEDULE- The party making a bona fide request of a rural telephone company for interconnection, services, or network elements shall submit a notice of its request to the State commission. The State commission shall conduct an inquiry for the purpose of determining whether to terminate the exemption under subparagraph (A). Within 120 days after the State commission receives notice of the request, the State commission shall terminate the exemption if the request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 (other than subsections (b)(7) and (c)(1)(D) thereof). Upon termination of the exemption, a State commission shall establish an

implementation schedule for compliance with the request that is consistent in time and manner with Commission regulations.

“(C) LIMITATION ON EXEMPTION- The exemption provided by this paragraph shall not apply with respect to a request under subsection (c) from a cable operator providing video programming, and seeking to provide any telecommunications service, in the area in which the rural telephone company provides video programming. The limitation contained in this subparagraph shall not apply to a rural telephone company that is providing video programming on the date of enactment of the Telecommunications Act of 1996.

“(2) SUSPENSIONS AND MODIFICATIONS FOR RURAL CARRIERS- A local exchange carrier with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide may petition a State commission for a suspension or modification of the application of a requirement or requirements of subsection (b) or (c) to telephone exchange service facilities specified in such petition. The State commission shall grant such petition to the extent that, and for such duration as, the State commission determines that such suspension or modification--

“(A) is necessary--

“(i) to avoid a significant adverse economic impact on users of telecommunications services generally;

“(ii) to avoid imposing a requirement that is unduly economically burdensome; or

“(iii) to avoid imposing a requirement that is technically infeasible; and

“(B) is consistent with the public interest, convenience, and necessity.

The State commission shall act upon any petition filed under this paragraph within 180 days after receiving such petition. Pending such action, the State commission may suspend enforcement of the requirement or requirements to which the petition applies with respect to the petitioning carrier or carriers.

“(g) CONTINUED ENFORCEMENT OF EXCHANGE ACCESS AND INTERCONNECTION

REQUIREMENTS- On and after the date of enactment of the Telecommunications Act of 1996, each local exchange carrier, to the extent that it provides wireline services, shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory

interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding the date of enactment of the Telecommunications Act of 1996 under any court order, consent decree, or regulation, order, or policy of the Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after such date of enactment. During the period beginning on such date of enactment and until such restrictions and obligations are so superseded, such restrictions and obligations shall be enforceable in the same manner as regulations of the Commission.

“(h) DEFINITION OF INCUMBENT LOCAL EXCHANGE CARRIER-

“(1) DEFINITION- For purposes of this section, the term ‘incumbent local exchange carrier’ means, with respect to an area, the local exchange carrier that--

“(A) on the date of enactment of the Telecommunications Act of 1996, provided telephone exchange service in such area; and

“(B)(i) on such date of enactment, was deemed to be a member of the exchange carrier association pursuant to section 69.601(b) of the Commission's regulations (47 C.F.R. 69.601(b)); or

“(ii) is a person or entity that, on or after such date of enactment, became a successor or assign of a member described in clause (i).

“(2) TREATMENT OF COMPARABLE CARRIERS AS INCUMBENTS- The Commission may, by rule, provide for the treatment of a local exchange carrier (or class or category thereof) as an incumbent local exchange carrier for purposes of this section if--

“(A) such carrier occupies a position in the market for telephone exchange service within an area that is comparable to the position occupied by a carrier described in paragraph (1);

“(B) such carrier has substantially replaced an incumbent local exchange carrier described in paragraph (1); and

“(C) such treatment is consistent with the public interest, convenience, and necessity and the purposes of this section.

“(i) SAVINGS PROVISION- Nothing in this section shall be construed to limit or otherwise affect the Commission's authority under section 201.

“SEC. 252. PROCEDURES FOR NEGOTIATION, ARBITRATION, AND APPROVAL

OF

AGREEMENTS.

“(a) AGREEMENTS ARRIVED AT THROUGH NEGOTIATION-

`(1) VOLUNTARY NEGOTIATIONS- Upon receiving a request for interconnection, services, or network elements pursuant to section 251, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251. The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement. The agreement, including any interconnection agreement negotiated before the date of enactment of the Telecommunications Act of 1996, shall be submitted to the State commission under subsection (e) of this section.

`(2) MEDIATION- Any party negotiating an agreement under this section may, at any point in the negotiation, ask a State commission to participate in the negotiation and to mediate any differences arising in the course of the negotiation.

`(b) AGREEMENTS ARRIVED AT THROUGH COMPULSORY ARBITRATION-

`(1) ARBITRATION- During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

`(2) DUTY OF PETITIONER-

`(A) A party that petitions a State commission under paragraph (1) shall, at the same time as it submits the petition, provide the State commission all relevant documentation concerning--

`(i) the unresolved issues;

`(ii) the position of each of the parties with respect to those issues; and

`(iii) any other issue discussed and resolved by the parties.

`(B) A party petitioning a State commission under paragraph (1) shall provide a copy of the petition and any documentation to the other party or parties not later than the day on which the State commission receives the petition.

`(3) OPPORTUNITY TO RESPOND- A non-petitioning party to a negotiation under this section may respond to the other party's petition and provide such additional information as it wishes within 25 days after the State commission receives the petition.

`(4) ACTION BY STATE COMMISSION-

`(A) The State commission shall limit its consideration of any petition under paragraph (1) (and any response thereto) to the issues set forth in the petition and in the

REFERENCE WEBSITE: <http://www.legis.nd.gov/cencode/t151c09.pdf>

15.1-09-34. Contracts by school boards - Bids - Penalty.

1. Except as provided in this section, the board of a school district may not enter a contract involving the expenditure of an aggregate amount greater than twenty-five thousand dollars unless the school board has given ten days' notice by publication in the official newspaper of the district, received sealed bids, and accepted the bid of the lowest responsible bidder. This section does not apply to contracts for:

- a. The personal services of district employees.
- b. Textbooks and reference books.
- c. Articles not sold on the open market.
- d. Patented, copyrighted, or exclusively sold devices or features required to match articles already in use.
- e. Patented, copyrighted, or exclusively sold articles so distinctive that only one brand can be purchased.
- f. Building construction projects under chapter 48-01.2.
- g. School transportation services purchased under section 15.1-30-11.
- h. Vehicle fuel purchased under section 15.1-09-34.1.
- i. Heating fuel purchased under section 15.1-09-34.1.
- j. The purchase of a used motor vehicle, including a schoolbus, motorbus, or van, intended primarily for the transportation of students.
- k. Cooperative purchases with the office of management and budget under chapter 54-44.4.

2. For purposes of this section, a "used motor vehicle" means a motor vehicle that has been previously owned or leased and which has an odometer reading in excess of eighteen thousand miles [28967 kilometers].

3. A board member who participates in a violation of this section is guilty of a class B misdemeanor.